

Legislative Update

Small Business Reorganization Act

HAVEN Act

CARES Act

2021 Consolidated Appropriations Act

Bankruptcy Administration Improvement Act of 2020

COVID-19 Bankruptcy Relief Extension Act

Virginia State Law Changes

House Bill 760:

Sec. 8.01-512.4;

Sec. 34-4;

Sec. 34-6

Sec.34-14

Sec. 34-17

Sec. 34-21

House Bill 395:

Sec. 40.1-28.9

Sec. 40-1-28.10

House Bill 1553:

Sec. 59.1-200 Title 6.2 Chapter 20.1, 6.2-2026-6.2-2050

House Bill 5068:

Sec8.01-512.4

Sec. 34-28.3

Proposed (Expired) legislation: Consumer Bankruptcy Reform Act

I. Small Business Reorganization Act of 2019

A. The SBRA was signed into law on August 23, 2019 and became effective 180 days later on February 19, 2020.

B. This act created a new subchapter to Chapter 11 of the Bankruptcy Code, making the process more stream-lined and cost-effective for small business debtors.

C. Prior to the passage of this act into law, small business owners were left with the decision between Chapter 7 or Chapter 11. Most small businesses could not afford the cost or manage the complexity of the Chapter 11 process and were unable to survive bankruptcy and retain control of the business operations. Subchapter V opens new doors to this group of small business debtors but is still in its infancy.

D. The SBRA removed the creditor committees of the traditional Chapter 11, appoints a Trustee for easier administration and tracking, limited disclosure requirements, prevents competing reorganization plans and provided better opportunities for equity retention by the debtor.

E. Unfortunately, the debt limit for the small business debtor wishing to take advantage of the Chapter 11 Subchapter V for combined secured and unsecured debt was established at \$2,725,625.00.

II. HAVEN Act

A. The HAVEN Act was signed into law on August 23, 2019. The purpose of the Act was to provide the same exclusion for veterans' disability benefits from the calculation of a debtor's current monthly income as was given to Social Security disability.

B. HAVEN = Honoring American Veterans in Extreme Need

C. Specifically the Act added the following to 11 U.S.C. Sec. 101(10A)(B)(ii):

1. "(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title."

D. The Act effectively made it possible for more veterans to qualify under Chapter 7 and to reduce the amount a debtor under Chapter 13 might be required to pay after the disposable monthly income calculation.

E. The caution is that the disability benefits are only excluded from current monthly income for retired veterans to the extent that the disability benefits exceed the amount the veteran would have received in retirement income had the retiree veteran not had a disability.

F. The 2018 VA Annual Benefits Report summarized that 25 percent of the total veteran population receives VA disability benefits. Nearly fifteen percent of both Chapter 7 and Chapter 13 bankruptcy filers are veterans, a disproportionate representation in bankruptcy as veterans comprise approximately ten percent of the United States population.

III. CARES Act.

A. The CARES Act was passed on March 27, 2020 and had radical impacts on many different areas of federal law. Bankruptcy was no exception as were a number of the non-Bankruptcy laws that impact many of the debtors on a daily basis.

B. CARES = Coronavirus Aid, Relief, and Economic Security Act

C. Section 1113 of Title I of the CARES Act is where the provisions related specifically to Title 11 of the United States Code are found.

1. Subchapter V of Chapter 11 created in the SBRA was amended (less than a month and a half after its implementation) to increase the debt limit for these small business debtors to a more generous amount of \$7,500,000.00 (combined secured and unsecured debts).

2. Amends 11 U.S.C. Sec. 101(10A)(B)(ii) to exclude from current monthly income the “(p)ayments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19).” Similarly, the CARES Act amends 11 U.S.C. Sec. 1325(b)(2) to exclude the same payments from the calculation of disposable income.

3. Section 1329 of the Bankruptcy Code was amended to allow the modification of a Chapter 13 plan in order to extend its term to 84 months. This term extension was only available to Debtors whose plan had been confirmed prior to the enactment of the CARES Act, who were or had experienced a material financial hardship due directly or indirectly to the COVID-19 pandemic, and the plan term extension was limited to 84 months after the first payment under the original confirmed plan was due.

4. All of these bankruptcy related provisions sunset 1 year after the enactment of the CARES Act.

5. ~~As of this writing, none of the subsequent legislation passed into law has extended any of the bankruptcy related provisions of the CARES Act.~~ Scratch that. The COVID-19 Bankruptcy Relief Extension Act of 2021 was signed into law on March 27, 2021.

D. Section 2102 detailed the pandemic-related unemployment assistance provided by the federal government and set it at \$600.0 per week with no waiting period. This assistance ended in December of 2020.

1. While these provisions arguably made significant strides in preventing economic shutdown, it also artificially inflated income for people that might otherwise have filed for bankruptcy but gave no true stability to their household income.

2. Arguably, these benefits are excludable from current monthly income calculations pursuant to 11 U.S.C. Sec. 101(10A)(B)(ii) and from disposable income under 11 U.S.C. Sec. 1325(b)(2) through the sunset of those provisions.

E. Section 3513 of the CARES Act suspended the requirement for payments on federal student loans with no accrual of interest or fees through September 30, 2020.

1. (This suspension has been extended several times since the CARES Act implemented the deferment and currently payments are scheduled to resume after September 30, 2021.)

2. Note: the months of non-payment under this provision of the CARES Act count month for month as a payment for any loan forgiveness program or loan rehabilitation program.

3. All involuntary collection related to federal student loans was also suspended.

F. Section 4021 provides that through the termination of the national emergency declared due to the COVID-19 pandemic creditors must take certain actions when reporting the delinquency or currency of an account where the debtor has paid as agreed through a modification or payment plan.

G. Section 4022 of the CARES Act details the Foreclosure Moratorium and Consumer Right to Request Forbearance.

1. During the pandemic, a borrower with a federally backed mortgage loan that is experiencing a financial hardship due directly or indirectly to the COVID-19 pandemic may request a forbearance of up to 180 days and then extend for another 180 days.

- a) Borrower simply has to request the forbearance and affirm the borrower is experiencing a financial hardship during the pandemic.

- b) The forbearance must be granted regardless of delinquency status of the loan.

- c) No fees, penalties or interest may accrue during the forbearance period.

2. With the exception of vacant or abandoned property, foreclosures may not be initiated or a foreclosure-based eviction may not commence for the 60 day period starting on March 18, 2020.

- a) These provisions have been extended several times by executive order and currently expire on June 30, 2021.

3. The forbearance and moratorium provisions do not oblivate the obligation to make payments. The payment obligation is just suspended during the term of the forbearance with the entire amount of forborne payments due at the conclusion of the period of forbearance.

a) Sadly, most debtors who have taken advantage of this provision of the CARES Act interpret it to be the same as the student loan deferment of payments and there is a marked difference between the two provisions, causing the risk of default for the unsuspecting Chapter 13 debtor.

H. Section 4024 of the CARES Act provided a moratorium on eviction proceedings against a defaulted tenant where the mortgage on the landlord's property is federally backed or the landlord receives any federal assistance, including rent assistance programs that assist the tenant in paying the rent. The moratorium provided was for 120 days from the enactment of the CARES Act. This provision has similarly been extended by executive order and is set to expire in March of 2021.

IV. Consolidated Appropriations Act, 2021 – An Act Making consolidated appropriations for the fiscal year ending September 30, 2021, providing coronavirus emergency response and relief, and for other purposes.

A. The bankruptcy-related provisions of this act are primarily in Title X of Division FF of the CAA of 2021, which was signed into law on December 27, 2020.

1. Notably, Division N, Titles II and III have impacts that touch on debtors in bankruptcy as well as many other segments of the American population.

2. Title II contains modifications to the CARES Act that extended the federal unemployment benefit eligibility through March 14, 2021 (a maximum of 50 weeks from 39 weeks) but decreased the weekly payout from \$600.00 to \$300.00

3. Title II further addressed the recovery rebates of \$600.00 per person maximum and the process to claim it if eligible on a tax return where it was not initially received.

4. Title III contains a series of provisions related to the Paycheck Protection Program and Section 320 modifies the Bankruptcy Code in order to allow some debtors the ability to receive these loans and provide for any necessary payment resulting from the PPP loan and still achieve confirmation of a plan. Notably if an eligible debtor moves the court for permission to incur this debt, the court shall hold a hearing within 7 days after the filing and service of the motion and the court may grant relief on a final basis. Specifically amended are 11 U.S.C. Secs. 364, 503(b), 1191, 1225, and 1325. These provisions sunset on December 27, 2022.

B. The CAA of 2021 was probably just as notable for what it did not do as what it did. The CAA of 2021 failed to address the provisions of the CARES Act that sunset on March 27, 2021. As of this writing, legislation has very recently been introduced to extend the bankruptcy provisions of the CARES Act but there is no clear reading on whether it will pass or not. Stay tuned!

C. The specifics of Title X, Division FF of the CAA of 2021 regarding Bankruptcy Relief

1. Amends 541(b)(11) to exclude the recovery rebates (\$600.00 per individual stimulus in early 2021) from property of the estate. Provided there are any future similar payments under the relevant portion of the Internal Revenue Code and this provision has not yet expired, those payments should similarly be excluded from the bankruptcy estate. This provision sunsets December 27, 2021.

a) An interesting corollary to this modification of 541 is the modification to the Internal Revenue Code found elsewhere in the CAA of 2021 (Sec. 272(d) of Div. N). That amendment provided that the recovery rebates were not subject to “execution, levy, attachment, garnishment, or other legal process, or the operation of any bankruptcy or insolvency law.” This leaves up to further interpretation whether the recovery rebates should be treated as disposable income under 11 U.S.C. Sec. 1325(b)(2).

2. Amends Sec. 525 to prohibit the discrimination against a person who is or has been a debtor in bankruptcy under the provisions of the CARES Act related to the foreclosure and eviction moratoriums and the right to request a forbearance. The scope of this anti-discrimination provision is limited by the facts that it sunsets on December 27, 2021 and the relevant provisions of the CARES Act were only applicable to federally-backed mortgage lenders.

3. Amends Sec. 501 to allow mortgage servicers to file a claim no later than 120 days after the end of the forbearance period for the forborne mortgage payments.

a) Practically, these supplemental claims may only be filed by federally-backed mortgage servicers because the forbearance provisions of the CARES Act only required they grant a forbearance to a consumer suffering the financial impacts due to the pandemic.

b) Sec. 502 was amended to require these supplemental claims must be filed within 120 days after the end of the forbearance regardless of the claims bar date in the case.

c) If the forborne payments are being cured through some loss mitigation process, then the supplemental claims must contain the following:

- (1) the relevant terms of the modification or deferral;*
- (2) a copy of the modification or deferral; and*
- (3) a description of the payments to be deferred until the date on which the mortgage loan matures.*

d) The amendment sunsets on December 27, 2021.

4. Amends Sec. 1329 to allow a debtor, the Court, United States Trustee, Trustee, or any party in interest (including the mortgage servicer) to file a motion to modify a plan to provide for the Forbearance Claim. The motion must be filed within 30 days after the Forbearance Claim. This amendment sunsets on December 27, 2021.

5. Amends Sec. 366 to add temporary section (d) regarding the termination of utility service to a debtor in bankruptcy. It specifies that a utility cannot terminate service to a debtor for failing to pay a deposit so long as the debtor pays the utility for services during the 20 day period beginning on the date the case is filed and continues to pay thereafter. This amendment sunsets December 27, 2021.

6. Amends 507(d) to give a party who pays the customs duty on behalf of an importer the government's priority status. This provision sunsets December 27, 2021.

7. Amends Sec. 365(d)(3) and (d)(4) regarding non-residential leases of real property. Both provisions sunset on December 27, 2022 but will continue to apply to a Chapter 11 Bankruptcy commenced before the sunset date.

a) *Under (d)(3), Subchapter V debtors may ask the bankruptcy court to grant an additional 60 day delay to pay rent on non-residential real property if the debtor has experienced and is continuing to experience a material financial hardship, directly or indirectly, as a result of the COVID-19 pandemic.*

b) *Under (d)(4), a debtor with an unexpired lease on non-residential real property may have up to 300 days total to decide whether to assume or reject the lease. The amendment increases the timeframe from 120 to 210 days but the existing law also gave the option to request the court extend the period by 90 days.*

8. Amends Sec. 547 to remove certain payments made to non-residential landlords and suppliers from being classified as a preference payment eligible to be clawed back by the trustee or debtor.

a) *The payment to the non-residential landlord must meet the qualifications of a "covered payment of rental arrearages" in order to qualify for this exception to the preference rules. Those requirements are that the payment of arrearages: 1) was made pursuant to an agreement or arrangement made on or after March 13, 2020, between the debtor and a lessor to defer the payment of rent and other charges; 2) does not exceed the amount of rent and other charges agreed to be paid under a lease executed before March 13, 2020; and 3) does not include fees, penalties or interest in an amount greater than under the original lease signed before March 13, 2020 or that the debtor would have been required to pay if every payment under the lease had been paid on time and in full.*

b) *The payment to a supplier must meet the qualifications of a “covered payment of supplier arrearages” to qualify for this exception to the preference rules. Those requirements are that a payment of arrearages: 1) was made pursuant to an agreement or arrangement made on or after March 13, 2020, between the debtor and a supplier of goods or services to defer the payment of amounts due under an executory contract for goods or services; 2) does not exceed the amount due under an executory contract executed before March 13, 2020; and 3) does not include fees, penalties or interest in an amount greater than under the original executory signed before March 13, 2020 or that the debtor would have been required to pay if every payment under the executory contract had been paid on time and in full*

c) *These provisions sunset on December 27, 2022 but remain applicable throughout any Chapter 11 case filed before the provisions sunset.*

9. Amends Sec. 1328 by adding a new subsection that allows the bankruptcy court to grant a discharge under 1328(a) where the Chapter 13 debtor with a residential mortgage that is being cured or payments made pursuant to 1322(b)(5) requests the entry of the discharge and the debtor has either: 1) Missed three or fewer mortgage payments because of a COVID-19-related hardship; OR 2) Has entered into a loan forbearance or modification.

a) *The most significant impact of this amendment is for jurisdictions where the debtor will not be granted a discharge if the debtor is not current on the required payments under 1322(b)(5). It gives these debtors the option to request under the temporary amendment the discharge be entered in spite of faltering on those ongoing mortgage payments.*

(1) Some have speculated that the provisions in this section may be interpreted to include scenarios where the debtor has defaulted on payments to the Trustee and meets the mortgage forbearance or modification test. If that were the correct interpretation, then a debtor could request a discharge at any time in a case when the debtor meets the mortgage requirement of forbearance or modification and leave the entry of that discharge at the judge’s discretion.

b) *What is not clear is if a debtor could use this provision to request a full discharge under 1328(a) instead of the restricted hardship discharge under 1328(b) in a situation where the debtor had not met the liquidation or disposable income requirements of the plan.*

c) *By restricting this amendment to mortgages being addressed pursuant to 1322(b)(5), the mortgage debt does not discharge and the arrears must be addressed by the debtor post-discharge.*

d) *This amendment sunsets on December 27, 2021, so litigation to determine the limits of this amendment must be undertaken fairly quickly but should have no long-term impact on the case law interpreting 1328.*

V. Bankruptcy Administration Improvement Act

A. This act was signed into law on January 12, 2021.

B. The continuing and overriding of the bankruptcy system is to be self-funded at no cost to the taxpayer. There is a system of fees (including but not limited to filing fees and quarterly fees in Chapter 11 cases) that together provide the necessary funding for the self-sufficient operation of the courts, pay the salaries and expenses of the judges, fund the United States Trustee, and compensate the Chapter 7 Trustees.

C. The primary contents of the law resulted in

1. Reduces the quarterly fee amount in Chapter 11 cases and simplifies the fee structure
2. Provides for the distribution of bankruptcy fees made to the United States Trustee System Fund and the administration of those fees
3. Addresses the Chapter 7 Trustee Fund and the associated fees
4. Extends the temporary appointments of bankruptcy judges in certain judicial districts

D. The most significant impacts to date tied to this act are

1. The long-awaited increase in the compensation of Chapter 7 Trustees. According to a memo from the Executive Office for United States Trustees, it is expected that Chapter 7 Trustee compensation will increase from \$60.00 to \$120.00 per case.
2. The anticipated reduction and simplification off Chapter 11 quarterly fees. Below is the Quarterly Fee Schedule effective April 1, 2021:

TOTAL QUARTERLY DISBURSEMENTS

\$0 to \$62,624
\$62,625 to \$999,999
\$1,000,000 to \$31,249,937
\$31,249,938 or more

QUARTERLY FEE

\$250
0.4% of quarterly disbursements
0.8% of quarterly disbursements
\$250,000

VI. COVID-19 Bankruptcy Relief Extension Act of 2021

A. Hours before the plan modification provisions in the CARES Act was set to expire, on March 27, 2021, the COVID-19 Bankruptcy Relief Extension Act of 2021 was signed into law. While it extended this some bankruptcy-related provisions in the CARES Act, it did not extend the provisions in the CAA of 2021. Quite the ironic twist given the expectation that the CARES bankruptcy-related provisions would be extended in the CAA of 2021.

1. The debt limit increase for small business debtors under Subchapter V of Chapter 11 was extended and will now sunset on March 27, 2022.
2. The exclusion of the COVID-19 recovery payments from the calculation of current monthly income and disposable monthly income was extended an additional year and will now sunset on March 27, 2020.
3. The provision allowing the modification of Chapter 13 plans after confirmation was extended another year, now to sunset on March 27, 2022.

VII. Virginia Law Updates

A. 2020 Legislative Session: House Bill 790 was signed into law on March 12, 2020 and became effective on July 1, 2020. It amended the following sections of the Virginia Code: 8.01-512.4; 34-4; 34-6; 34-14; 34-17; and 34-21.

1. 8.01-512.4 Notice of exemptions from garnishment and lien
 - a) *This amendment revised the form notice and instructions for debtors to claim exemptions from creditor process to comply with the subsequent amendments.*
2. Sec. 34-4 Homestead exemption.
 - a) *Arguably, one of the biggest changes in the practice of bankruptcy in many years. It opens the door for more debtors to file Chapter 7 in Virginia where there is some equity in their home and they cannot utilize another exemption to protect that equity.*
 - b) *The amendment carved out a new exemption for real or personal property that the debtor or his dependent uses as a principal residence up to \$25,000 in value, per individual debtor.*
3. Sec34-6 How exemption of real estate secured
 - a) *Notably, it provides that the Schedule C filed with the United States Bankruptcy Court in a bankruptcy proceeding is a sufficient writing to claim the homestead exemption in real property.*
 - b) *Any debtor seeking to protect real and/or personal property from creditor process outside of the Bankruptcy Court must still record a homestead deed in the land records of the county where the property is located.*
4. Sec.34-14 How set apart in personal estate

a) *The official form Schedule C filed with the United States Bankruptcy Court in a bankruptcy proceeding is a sufficient writing to claim the homestead exemption in personal property.*

b) *Again, for a debtor who has not filed a bankruptcy proceeding under Title 11 of the United States Code, the homestead exemption must be recorded in the land records to be operable to stop creditor process.*

5. Sec. 34-17 When exemption may be set apart; garnished wages

a) *This amendment removed the requirement that a homestead deed for a debtor in a bankruptcy proceeding be recorded within 5 days after the meeting of creditors.*

b) *Instead, the law now requires that the exempted property must be set apart under 34-6 or 34-14 any time before it is subject to sale under creditor process or by a trustee in bankruptcy or before it is turned over to the creditor, if such creditor process does not require sale of the property (i.e. wage garnishment).*

6. Sec. 34-21 When householder's right to exemption is exhausted

7. A debtor's ability to use the homestead exemptions in real and personal property to set the assets apart from creditor process resets every 8 years.

B. 2020 Reconvened Legislative Session: House Bill 395 was signed into law on April 22, 2020.

1. Sec. 40.1-28.9. Definitions.

a) *Created a new defined term "adjusted state hourly minimum wage" which was to be set by the Commissioner.*

b) *Removed and clarified some of the exclusions from the definition of "employee."*

c) *Expanded the definition of "employer."*

d) *Defined "Federal minimum wage."*

e) *Expanded the definition of "wages" to include the reasonable cost to the employer of furnishing meals and lodging for an employee.*

2. Sec. 40.1-28.10. Minimum wages.

a) *Sets a graduated schedule to increase incrementally the minimum wage for employees in the Commonwealth of Virginia to be paid by employers. From enactment through May 1, 2021, the federal minimum wage is the minimum.*

a) *Effective May 1, 2021, increases minimum wage from federally mandated level of \$7.25 per hour to \$9.50 per hour; to \$11.00 per hour effective January 1, 2022; to \$12.00 per hour effective January 1, 2023; to \$13.50 per hour effective January 1, 2025; and to \$15.00 per hour effective January 1, 2026.*

b) *For January 1, 2027, and thereafter, the annual minimum wage shall be adjusted to reflect increases in the consumer price index.*

c) *The measure provides that the increases scheduled for 2025 and 2026 will not become effective unless reenacted by the General Assembly prior to July 1, 2024. If such provisions are not reenacted prior to July 1, 2024, then the annual minimum wage will be adjusted to reflect increases in the consumer price index beginning January 1, 2025.*

d) *Training wage of 75% of the minimum wage for on-the-job training that lasts less than 90 days.*

C. 2020 Legislative Session: House Bill 1553 was signed into law on April 7, 2020 and became effective on July 1, 2021.

1. Amended Sec. 59.1-200 to add Title 6.2, Chapter 20.1, 6.2-2026-6.2-2050

a) *This new chapter defines “debt settlement services” and creates a licensure and regulation scheme to address their activity.*

b) *Notably, a private right of action against debt management service providers is created for consumers, provides for civil penalties, and makes violations a prohibited practice under the Virginia Consumer Protection Act.*

D. 2020 Special Session I: House Bill 5068 was signed into law on October 28, 2020.

1. Sec8.01-512.4. Notice of exemption from garnishment and lien.

a) *This amendment revised the form notice and instructions for debtors to claim exemptions from creditor process for emergency relief payments (defined in 34-28.3)..*

2. Sec. 34-28.3. Emergency relief payments exempt.

a) *Emergency relief payment defined as the federal payment to individuals made pursuant to the CARES Act and future payments or rebates provided directly to individuals for economic relief or stimulus due to the COVID-19 pandemic. Not to exceed \$1,200 per individual per payment or rebate and not to exceed \$500 for each qualifying child paid to the individual per payment or rebate.*

b) *The emergency relief payments are automatically exempt from creditor process.*

c) *Imposed requirements for a financial institution to conduct various account reviews for the emergency relief payments in an account and to not allow the turnover of those exempt funds pursuant to any creditor process and to allow the release of those funds to the debtor.*

d) *The emergency relief payments are not exempt from collection for child support, support, or criminal restitution orders.*

e) *These provisions only apply to creditor process active or initiated after the enactment of the amendment. If the creditor process concluded before the enactment of the act, then it does not apply.*

VIII. Proposed Legislation: COVID-19 Bankruptcy Relief Extension Act

A. Introduced February 25, 2021 to extend the bankruptcy provisions in the CARES Act that are scheduled to sunset on March 27, 2021 and the Consolidated Appropriation Act of 2021 that are scheduled to sunset on December 27, 2021 through March 27, 2022.

B. Stay tuned . . .

IX. Proposed but Expired Legislation: Consumer Bankruptcy Reform Act of 2020

A. This sweeping legislation was proposed on December 9, 2020 by Elizabeth Warren and Jerrold Nadler to overhaul the bankruptcy system as we know it. It was not passed but may resurface in another session of Congress. Keep in mind that it took many years of reintroduction and amendments before BACPA was passed into law.

B. Key components of the proposed legislation

1. Chapter 10 replaces the current consumer bankruptcy Chapters 7 and 13. The debt limit for Chapter 10 would be \$7,500,000.00; any debtor with debts exceeding that limit would need to file under Chapter 11 or 12,
2. Credit counseling requirement abolished.
3. Meetings of Creditors conducted pursuant to 11 U.S.C. Sec. 341 would be scheduled around the debtor's work schedule and conducted remotely.
4. The focus on whether a debtor have the funds to make the required minimum payment should be less focused on their actual spending (even on perceived luxury items) and more on their non-exempt asset liquidation value and their annual income. Every Chapter 10 debtor has a "minimum payment obligation," which is the sum of the debtor's non-exempt assets and a graduated percent of annual income that exceeds 135% of the state median income for the debtor's household size.
5. Chapter 10 debtors may receive a discharge once every six regardless of whether the debtor is required to pay or receives an immediate discharge.
6. Chapter 10 debtors who enter a repayment plan do so for three years.
7. Chapter 10 debtors can file up to three separate plans instead of one that addresses all debt in a Chapter 13. The categories of plans include:
 - a) Residence plan – addresses the mortgage on a debtor's principal residence; similar to a Chapter 13, it allows the debtor to change loan interest rates, adjust amortization schedules, and cure defaults; contrary to Chapter 13, the debtor can modify the terms of a mortgage on the principal residence; must be proposed in conjunction with a General Repayment plan if discharge is sought; payments may be made over the longer of 15 years or 5 years after the stated maturity date of the mortgage;

b) Property plan – addresses obligations secured by property other than the principal residence; similar to a Chapter 13, it allows the debtor to change loan interest rates, adjust amortization schedules, and cure defaults; must be proposed in conjunction with a General Repayment plan if discharge is sought; plans may be for the longer of 5 years or the stated maturity date of the debt;

c) General Repayment plan – addresses a debtor's unsecured obligations

8. Immediate discharge is entered for any debtor who has insufficient non-exempt assets and/or income to trigger a repayment plan as opposed to the approximately 90 – 120 days for a Chapter 7 case to discharge.

9. Discharge is entered upon confirmation of a repayment plan.

10. Allows a debtor to pay attorney's fees over time even in immediate discharge cases.

11. 11 U.S.C. Sec. 523 would be amended to allow the discharge of certain previously non-dischargeable debts, including student loans, which would be treated like any other unsecured debt.

12. A creditor (or its predecessor) who has engaged in conduct that violated consumer protection laws with regards to the debtor would have the claim disallowed in the debtor's case. Conversely, the Fair Debt Collection Practices Act would be amended to make the filing of a claim in bankruptcy for a stale debt an unfair practice.